



Barry Beyeler, Chair ■ Renee Dowlin, Vice Chair ■ Hanley Jenkins II ■ Trey Senn ■ Betty Roppe ■ John Mohlis ■ Jack Billings

October 9, 2015

Curtis E. Melcher, Director
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302

RE: Notice Pursuant to ORS 469.520 / Temporary Rulemaking by the Oregon Fish and Wildlife Commission Concerning Sage Grouse Mitigation and Energy Facility Development

Dear Director Melcher,

On October 1st, I received ODFW's notice of temporary rulemaking relating to sage grouse mitigation and energy facility development pursuant to the requirements of ORS 469.520. Oregon Department of Energy (ODOE) staff has evaluated ODFW's proposed amendment to OAR 635-415-0025, and has recommended that the Energy Facility Siting Council ("EFSC," or "the Council") need not exercise its authority under ORS 469.520(2) to order any changes necessary to conform to state policy as stated in ORS 469.010 and 469.310.

Staff's evaluation confirmed that ODFW's proposed language under the newly created Section (7) of OAR 635-415-0025 includes the two elements that EFSC considers very valuable in establishing a well-functioning integration of the EFSC process with ODFW's sage grouse policy. The first additional element, which is consistent with an optional exemption included in the Land Conservation and Development Commission's (LCDC's) newly adopted sage grouse rule OAR 660-023-0115(2)(b), gives any energy facility applicant that has submitted a preliminary application for a site certificate the option to comply with the amended sage grouse mitigation rules of Chapter 635, Division 140 or the existing habitat categorization and mitigation policy rules of Chapter 635, Division 415. The second additional element creates a cross reference in existing habitat categorization and mitigation rule OAR 635-415-0025 to the amended sage grouse rules in Chapter 635, Division 140. Locating this Division 140 cross reference in OAR 635-415-0025 allows the amended sage grouse mitigation rules to function as an EFSC standard the same way OAR 635-415-0025 functions as a standard by being referenced in the EFSC Fish and Wildlife Habitat standard under OAR 345-022-0060.

To ensure compliance with ORS 469.520(2), ODFW's notice letter and proposed rule language, along with staff's analysis and recommendation, were forwarded to all the members of the Council for their individual review. Council members were given the opportunity to review the proposed amendment to OAR 635-415-0025 and request a special EFSC meeting to discuss the proposed rule language if they felt one was warranted. No council member made a request for a special meeting. Therefore, in accordance with staff's recommendation, EFSC will not exercise its



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authority under ORS 469.520(2) to order any changes necessary to conform to state policy as stated in ORS 469.010 and 469.310.

Thank you for the timely notice of ODFW's plans to file temporary rules relating to energy facility development, the Council truly appreciates the opportunity to collaborate with the Oregon Fish and Wildlife Commission (OFC) and provide EFSC input. EFSC and ODOE staff look forward to continuing to work with the OFC and ODFW staff in developing a permanent rule to replace this temporary rule language.

Regards,

s/ Barry Beyeler, Chair
Energy Facility Siting Council

C: Ron Anglin, Wildlife Division Administrator, ODFW
Alan Dale, Malheur Watershed District Manager, ODFW
Erin Donald, AAG, Oregon DOJ
Todd Cornett, Assistant Director, ODOE
Jason Sierman, Rules Coordinator, ODOE
Renee France, AAG, Oregon DOJ